



May 25, 2000

Ms. Lisa M. Salinas
Custodian of Records
City of Baytown
3299 North Main Street
Baytown, Texas 77521

OR2000-2070

Dear Ms. Salinas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136177.

The Baytown Police Department (the "department") received a request for the complete arrest record of a named individual. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses the common law right to privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (concluding that federal regulations which limit access to criminal history record information that states obtain from the federal government or other states recognize privacy interest in such information). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See Open Records Decision Nos. 616 (1993), 565 (1990)*. As response to the request requires a compilation of the subject individual's criminal history, we conclude that such information that identifies the subject individual as an arrestee or criminal suspect must be withheld under section 552.101 of the Government Code. We agree that you must withhold the pink highlighted information and we have marked additional information that you must withhold.

You also assert that the information responsive to the request contains a social security number. Social security numbers may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See Open Records Decision No. 622 (1994)*. These amendments

make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* You assert that sections 6103(a), (b) and 7213 of Title 26 of the United States Code make the social security numbers confidential. Sections 6103(a), (b) and 7213 pertain to the confidentiality of tax returns and return information. Section 7213(b) states that it is unlawful for any state or other employees willfully to disclose to any person, except as authorized by this title, any tax return or return information, except as provided by various subsections of section 6103. *See* 26 U.S.C. § 7213(b). Section 6103(a) states that return or return information shall not be disclosed by any officer or employee of the United States, any state, any local child support enforcement agency or local agency or any other person who has access to the information. *See* 26 U.S.C. § 6103(a). We conclude that the submitted documents are not tax returns and the submitted documents do not contain tax return information. Therefore, sections 6103(a), (b) and 7213 of Title 26 of the United States Code are not applicable and do not make the social security numbers confidential. We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Gov't Code § 552.352. Prior to releasing the social security number, the department should ensure that this number was not obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

Finally, you assert that the submitted information contains a driver's license number. Section 552.130 of the Government Code excepts from disclosure information relating to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or local agency authorized to issue an identification document.

Gov't Code § 552.130(a). Section 552.130 requires the department to withhold any information relating to a Texas motor vehicle operator's or driver's license or motor vehicle title or registration. We agree that you must withhold the driver's license number, and we have marked the license class information the you must also withhold. This information must be redacted prior to the release of the documents.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

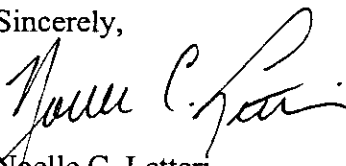
governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Noelle C. Letteri
Assistant Attorney General
Open Records Division

NCL/nc/ljp

Ref: ID# 136177

Encl. Submitted documents

cc: Mr. Fletcher Hickerson
115 Cabaniss Avenue
Baytown, Texas 77520
(w/o enclosures)